JUDGE CASTEL				α
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Attorneys for Plaintiff,				NOV . 6 2005
DANBY PRODUCTS, INC.				
			U.S	.D.C. S.D. N.Y CASHIERS
UNITED STATES DISTRICT C	COURT			
SOUTHERN DISTRICT OF NE	W YORK			
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DANBY PRODUCTS, INC.,		:	05 Civ	***************************************
	Dlaintiff			
-against-	Plaintiff,	;	COMPL	A TINITI
-against-		•	COMIL	ZZIIVI.
MEDITERRANEAN SHIPPING	G COMPANY,	S.A,		
		:		
	Defendant.			
		:		
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Plaintiff, Danby Products, Inc. ("Danby"), sues Defendant, Mediterranean Shipping Company, S.A. ("MSC"), and alleges:

JURISDICTION AND VENUE

- 1. This is an admiralty and maritime action as provided in Rule 9(h), Federal Rules of Civil Procedure. This Honorable Court possesses jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1333.
- 2. As will be set forth below, the actions herein are all based on the terms of bills of lading issued by or on behalf of MSC. In accordance with Clause 2 of the

applicable bills of lading, exclusive jurisdiction for disputes arising thereunder is in this Court.

THE PARTIES

- 3. Danby is a corporation organized under the laws of the State of Delaware, engaged and specializing in the business of coordinating the overseas manufacture and domestic sale of compact refrigerators and other household appliances. Danby's principal place of business is at 101 Bentley Court, Findlay, Ohio, 45840-0669.
- 4. Defendant MSC is a foreign corporation engaged in the business of providing global shipping and delivery services around the world. Upon information and belief, MSC has a place of business at 420 Fifth Avenue, New York, New York 10018.
- 5. Defendant MSC is in the business of a common carrier and conducts business with respect to shipments to, from and within the State of New York and the United States as a whole within the meaning of Rule 4(k)(2), Federal Rules of Civil Procedure.

GENERAL ALLEGATIONS

6. The individual claims asserted in this action by Plaintiff Danby arise from certain contracts of carriage evidenced by certain through bills of lading entered into between Danby and Defendant MSC on or about October 6, 2004 and November 25, 2004. The contract of carriage and through bills of ladings, MSCUCP

174224 and MSCUCP 176294 (the "Bills of Lading"), are attached hereto as composite Exhibit "A."

- 7. The purpose of the Contract of Carriage was the shipping and transport by Defendant MSC of washing machines and dryers belonging to Danby from Koper, Slovenia, to Ottawa, Ohio (the "Goods").
- 8. The terms of the Bills of Lading specified Defendant MSC as the carrier, the port of discharge as New York, and the place of delivery as Ottawa, Ohio.
- 9. On or around November 7, 2004 (MSCU CP174224) and December 26, 2004 (MSCU CP176294), Defendant MSC delivered the Goods to the port of discharge of New York.
- 10. At or around those dates, pursuant to paragraph 24 of the Bills of Lading, Danby's custom's broker, Fedex Trade Network ("FTN"), arranged for all custom formalities to be completed in New York and satisfied all necessary requirements pursuant to the relevant Bills of Lading.
- 11. Written confirmation of clearance by the United States Customs and Border Protection was provided to Defendant MSC by FTN.
- 12. However, despite receipt of the written confirmation of clearance,
 Defendant MSC erroneously designated the goods as remaining in bond.
- 13. Thereafter Defendant MSC, as carrier, transported the Goods from the port of discharge of New York to Columbus, Ohio.

- 14. Because of the erroneous designation by Defendant MSC that the Goods were in bond, the Goods were improperly detained in Columbus, Ohio and stored by an entity known as Trimodal Services, Inc. ("Trimodal").
- 15. After being notified of the detainment, on or around January 24, 2005, Danby requested Defendant MSC's assistance and cooperation pursuant to its delivery obligations in accordance with the through Bills of Lading in securing the release of the Goods.
- 16. Defendant MSC failed to provide such cooperation and the Goods remained detained.
- 17. In order to have the Goods released, Danby was forced to incur accrued costs of \$41,275.00, which it paid under protest to Trimodal, in order to release the detained Goods.
- 18. Danby obtained validation that the Goods should not have labeled by Defendant MSC as in bond, but rather confirmed the Goods had been cleared by the United States Custom and Border Patrol and that this information had been given to Defendant MSC.
- 19. Danby requested Defendant MSC reimburse Danby for the costs

 Danby incurred in securing the release of the Goods; however, up until and at the
 time of filing this action, Defendant MSC has refused to reimburse Danby for those
 damages.
- 20. As a result of Defendant MSC's breach of the Bills of Lading, Danby has been damaged.

- 21. All conditions precedent to the bringing of this action have occurred, or have been waived by the Parties.
- 22. Danby sues on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

CAUSE OF ACTION BY DANBY AGAINST MSC FOR DAMAGES BASED ON BREACH OF CONTRACT

- 23. Danby re-alleges and reincorporates paragraphs 1 through 22, as if fully set forth herein.
- 24. Danby and Defendant MSC entered into an agreement for the proper shipment of goods from Koper, Slovenia to the place of delivery in Ottawa, Ohio.
- 25. Defendant MSC breached that agreement by failing to properly designate the shipped goods.
- 26. Due to Defendant's MSC breach of the agreement, Danby was damaged in that it was forced to pay storage and other charges in order to have the goods released.

WHEREFORE, Danby demands judgment against Defendant MSC for all damages, together with interest, costs and all further relief the Court deems just.

Dated:

New York, New York November 15, 2005

HOLLAND & KNIGHT LLP

James H. Hohenstein (JH 3285)

Jean M. Del Colliano (JDC 0584)

195 Broadway

New York, New York 10007 Telephone: (212) 513-3200 Telefax: (212) 385-9010

E-mail: <u>jim.hohenstein@hklaw.com</u> <u>jean.delcolliano@hklaw.com</u>

Attorneys for Plaintiff DANBY PRODUCTS, INC.

TO: Mediterranean Shipping Company, S.A.

c/o Mediterranean Shipping Company (USA) Inc.

420 Fifth Avenue New York, NY 10018

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1. PARAMOUNT CLAUSE. This BH, shall have effect as follows:
(a) For all trades, succept for goods shipped to or from the United States of America, this BH, shall be subject to the 1924 Hague Rules with the express exclusion of America bit, or a formation/p applicable, subject to the 1968 Protocol Frague-Veby) or any computory to publish the best of the Hague Rules and/or said Protocols, When I frague-Rule registering its computerty applicable in the Parameter of America BH and registations are incorporated herein as if set inches at length, and copies may be requested in writing from the carriers for the subject to the U.S. Carridge of Goods by Sea

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14. (a) FRAGILE CARGO. All articles of glass or contained in glass, or any of a fragile nature will be taken on bourfak only, and the Merchant agrees that the Carrier or Carriers shall not be held responsible for any injury or breake

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29. MERCHANT'S WARRANTY: The Merchant hereby expressly warrants that he has proper authority in relatic are shipped under this B/L and holds the Carrier fully harmless in respect of any claim arising from the Shipp

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- anous are pishly and poward the same at Carrier's expense but at Melchanit's feet.

 8. THE SCOPE OF VOYAGE. The voyage herein understeen shall include issued or customary or advertising power of cell whether are med in his contractor not, slape post on or out of the advertised geographical, usual or ordinary noted of order, when though his properties of the advertise of the properties of the advertise of the properties of the properties of the advertise of the properties of t

- DEPARTIFIES AND ARRIVAL DETERMENT AND ALL OF THE PROPERTY OF T
- 10. EXPORT OR IMPORT IMPEDIMENTS. Should the goods be refused exportation or importation by a rity or by anyhody purporting to act with this authority of any government or authority, or should the good to a refuse of the property of the state of the state of the property of the state of the
- carriage beyond the port or place where the Carmer vouid nave neem ensured to discharge the ground.

 I. DECLARATION OF NATURE, WIGHLIGHT OR MASSUREMENT OR GROUP AND OF CONTENTS OF PADILAGE. If the newsor of the value of the catigo has been mis-stated to the Carmer, the Merchann is not fable to any joderendication relationers. In all cases, in a cases, in a case, in a case

- (b) REFER, CHILLED OR HEATED CARGO. Redispirated or heated carriage and carriage at controlled temporarbus shall not, be furnished unless specifically stipulated in Box 13 Perficules Purnished by the Morchant, reverse side, and dwarf reight pade por limits a carrying in purporarbus a periodic Disc 17, 18, 18 appead that the Mortant shall shall be good so that the supportance, but so report the state of the state of

- 20. SPECIAL CIRCUMSTANCES. If during the voyage special circumstances occur with report to the or of the vessel had to part for a port of distress or such like port, or if the vessel expensiones exceptional delay fination of control of the vessel had to part for a port of distress or such like port, or if the vessel expensiones exceptional delay fination of control of the vessel expensiones exception at delay the except of the control of the carpo, and without projection to eventual indemnification in General expensions of the control of the carpo of the curry of the control of the control of the carpo of the ca
- chappes. (6) If any shaulion interest to in this cause may be anticipated, or in or any reason to yease camps a called many cancel the configuration of expert, the incline proxy cancel the configuration of experts the incline proxy cancel the configuration of the carried for concellent and the carried of the carried for concellent to the basis of the involved to the configuration of the basis of that whole or is part is causelined that the option of the Center or the basis of the involved to the configuration of the carried to carried to the carried to th

- GENERAL AVERAGE, SALYAGE, & NEW JASON CLAUSE. General Average shall be adjusted, stated and settled for Antwerp Rules 1974, except Rule 2011 theseof, at the place selected by the Carrier, and as to matter, not provide selected selection of the lakes and usage at the port of New York, NY, USA, Average agreement or bond or such other Selects, according to the lakes and usage at the port of New York, NY, USA, Average agreement or bond or such other parts.

- FINAL ÄGREEMENT. All prior agreements, Dock Receipts or Freight Bookings of the shipment of the goods and ell dither arr ment suppersaded by this Bill of Lading Contract or Way Bill Receipt which constitutes the Final Agreement between the Can the Contract of the Contract of the Contract of Way Bill Receipt which need to be ship to be a supported to the Contract to Notifice shall not fill set the valid for a representative of any other through the Contract of the Contract o

Case 1:0 11 of 12 Document 1 in Sc MEDITERRANEAN SHIPPING COMPANY S.A., Geneva ORIGINAL RIDER PAGE to BILL OF LADING or WAY BILL, Page nº (14) CONTINUATION (13) CONTINUATION OF SHIPPERS MEMORANDA Reference number of Original The contents in this section are deemed to be a natural continua-tion of the information provided by Shippers in Box 13 of the Bill of Lading shown and are governed by the same reservations of the Carrier as stated in B OF CARRIER'S RECEIPT Bill of Lading or Way Bill: 16573/45839-0669 MSCUCP176294 Corresp. number of cont. or other packg: Total nor of ctrs or other packgs received by the carrier Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable) Identity Marks of Cont. or other packages and seal number(s) Cargo Gross weight Measurement x 40 HIGH CUBE SAID TO CONTAIN
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SHIPPED ON BOARD MV

20041125

171A

MSC ANASTASIA

DATE :

SIGNED ON BEHALF OF THE MASTER

MSC AGENTSC KOPER d.o.o.

212

PLACE AND DATE OF ISSUE

20041125

PARAMOUNT CLAUSE. This BL shall have effect as follows:

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Things as long as the goods remain in the contract of Carriage evidenced by this 8A, shall be subject to the exclusive jurisdiction (i) any claim or dispute sixing from the Contract of Carriage evidenced by this 8A, shall be subject to the exclusive jurisdiction to the 19th Control of statistic in incode, and English the shall be applied;
(ii) Control to 18th, any claim or dispute sixing from the Contract of Carriage evidenced by this 85. Instating to campo cannot to (ii) Control to 18th, any claim or dispute sixing from the Contract of Carriage evidence by this 85. Instating to campo cannot be under the United States (iii). District Court, Southern District New York, and United States (iii) which is applied;
(iii) In addition to the above, in case of any dispute relating to finglish and other sums payable to the carrier under the contract, (iii) In addition to the above, in case of any dispute relating to finglish and other sums payable to the carrier under the contract.

SEVERANCE CLAUSE, in case of any part thereof in this Bot, which is found by the Court determining a claim under this Bot, conflict with the provisions of any computatory applicable convention or national saw, which cannot be departed from by agreed or occurred, shall, us the state of any computatory applicable convention or national saw, which cannot be departed from by agreed or occurred, shall, us the state of any inconsistency but no further, by sold and such clause or part thereof as the base shadow of the contraction of the contracti

4. PERIOD OF RESPONSIBILITY.
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discharge from the visuals and the Carrier small not be seven so near to make a continue product for the charging from the vessel, horsoners such loss or damage may arise. Leading and discrizing taxes passes the pools pass the vessel's all or sizes, the pools pass the vessel's all or sizes, the pools pass the vessel's all or sizes, and the product of the seven sev

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10 Combined Prantograd alphanes friend to boxes 5, 6, 9, 8, 10 on the face of the BTL in the bean agreed between Merchant at the process of the control of the Carrier.

10 Combined Prantograd alphanes friend to boxes 5, 6, 9, 8, 10 on the face of the BTL in the bean agreed between Merchant at the process of the control of the Carrier and the state of the s

(i) This Carrier shall be entitled to risk upon all exclusions under the rules or legislation that would have expliced under Clause 4 (i) when some control plane is control to the control of the control causing the less or change, he shall only be liable to the control to the control causing the less or change, he shall only be liable to the control to the control to the less of the control cause to the c

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handing with 5e charges to the cargo interests.

HAZARDOUS GOODS, MARKHONS, Goods of a dangerous or hazardous nature and radio-active material shall not be tend for shipment uriess a written certificate of declaration, issued in accordance with the applicable national laws and regulations of the Carder proving; (b) but the goods, and, if applicable, the consideration of the carder proving; (b) that the goods, and, if applicable, the consideration is carder proving and proving and proving and applicable and are adequately packed, and, (b) the correct technical name, nature and class appearance posts are carderly stated. Whetherthat shall also be responsible for including such immedia in the "Areticulars appearance proving and the proving and

EXPORT ORI IMPORT IMPEDIMENTS. Should the goods be refused exportation or importation by any government or author or by anybody purporting to act with the authority of any government or authority, or should the goods in the Currier's opinion in authority or should be recreased in a threshold to discharge, framiting, return, more or destroy them, their has able to entitled in a such currier and the consideral rate of the should be sufficient for a such as the sufficient for a sufficient for a such as the sufficient for a suffic

12. IRON AND STEEL PRODUCTS. The Carrier need not take exceptions to, and is not held responsible for atmospheric rust, superficial coldation, white rust, or any other alteration due to unavoidable sweat or moleture, which might affect the external aspects of the lon or steel goods or result from their special nature.

PREPER, CHILLED OR HEATED CARGO. Retrigerated or heated carriage and certisge at controlled temperature shall not be furnished unless specifically alphaladed in Day 10 Particulars Furnished by the Merchand, revenue side, and earth relight paid are fulfilled in the specifical specifical

The destruction exponentially have one for the functioning of needer soldsines or trakes which are not owned of the function o

other perkinable Goods are certified expressly as my sole risk of the Metircans.

I. S. SPECIAL CARGO, For their and loss of gold, skey, precious retains, in a manufactured state or not, or spi-watches, lurs, lesses, jewels, precious stories, securities, papeer money, documents or other papears of value, alls, pa-lars, plassware or other precious stories, securities, papeer money, documents or other papears of value, alls, pa-lars, plassware or other precious stories, securities, papeer money, documents or precious precious active as any design of the lars, plassware or other precious stories or various stories, sold precious active or other papears of value, alls, pa-ties, plassware or other precious stories, and the precious stories or other papears of value of the papears of double plags with inside searns, or in house, both selectif with wax and the seal must be approximated on the Bill of List double plags with inside searns, or in house, both selectif with wax and the seal must be approximated on the Bill of List and a device accumance, but in task its maturitation of all one through the papears.

FREIGHT & WAR RISKS CHARGES. Full freight hereunder shall be considered completely earned upon receipt of the goods the Carrier, whether the freight is stated to be prepaid or collect, and the Carrier shall be entitled to all freight and charges du

or the vessel has to put into a port of dishesa' or such like poir, or if the vessel appelences exciptional delay at a Measter or Carrier is thur also discretion has the like hery, noverhistansing all measures for the contrave good or has the account of the carpo, and without prejudice to eventual indemnification in General Average. Regarding damag the further transport of which is objectionables, or carge by another conveyance at the exposure of the carpo, and the highly or forwarding vessel or means of transportation not operated by the Carrier or Meater, shall be consider westing Agent of the Membrant and without any other responsibility whetherever.

21. GOVERNMENT DIRECTIONS, WAR, EPIDEMICS, ICE, STRIKE ETC. (a) The Master and the Carrier shall have be ply with any order or directions or recommendations in connection with the transport under this contract (yet no by any C product of the product of the connection of the connection with the transport under this contract (yet no by any C transport would expose the vessel or produce or connection of the connection of t

chaptes, (i) it any electron reterred to in their clause may be anticipated, of it for any feason the vessed cannot as it dollar reach or enter tending english, the Confer may cancer the content of a confer and only reach or enter tending english, the Confer may cancer the content of the conference of the conference

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24. OUSTONS, ETC. The Shipper and Marchant and/or their Agents and Servants including Fielght Forwarders shall on a Standard Professional Control of Casterna Regulators, relative to the recold applicable has provided the Shipper and Marchant and professional Casterna Regulators, relative to the recold applicable has been seen to the Shipper and Casterna Castern

rings.

SECURITY AND LESS, (i) if the feelph and any further changes or synapses incurred by the Centre that are due, paid on the sea has height a greatly be a party other than the receives including feelph to be organized, and if a decise on the year bear necessary to the sea height a greatly of the sea height and the sea of the contract of the sea of the contract of the sea of the

23. GENERAL AVERAGE, SAUNGE, A NEW JASON CLAUSE General Average shall be adjusted, stated and settled as to York Antwerp Rules 1974, accept his XXXI thereof, at the place selected by the Carrier, and as to matter not provide these Pulse, accepting to the laws and usage at the port of the York, YXXI CAV, Average agreement or bood or such other these Pulse, accepting to the laws and usage at the port of the York, YXXI CAV, Average agreement or bood or such other manners of the York o

MERCHANT'S WARRANT'S The Merchant hereby expressly warrants that he has proper authority in relation to the g shipped under this B/L and holds the Carrier fully hernless in respect of any claim arising from the Shipper or Cor

having title to the goods.

30. EQUIPMENT DEMURRAGE Selore loading the Center allows to Merchant three days container utilisation for which the day of collection executely is included; thee of demurrage. In addition the Center allows a demurrage-free period in accordance with this entire of the manifested destination and as evident by the materiate prior the day of collections are severed in accordance with the selection of the control of the selection of the control of the control

FINAL AGREEMENT All prior agreements, Dock Receipts or Frivight Booldings of the extrament of the goods and all othereds are superacided by this Bill of Lading Contract or Way 80 Receipt which constitutes the Final Agreement between the Merchant. The terms of this Contract shall be severable, and if any provision hereof is held to be invalid or unsoften holding shall not effect the validity or endouseablity of any other provisions or parts of this Bill of Lading or Way 80 R. Any table from the Master of the Master of the Contract of the Sill of Lading or Way 80 R. Any table from the Master of the